REMARKS

Claims 1-16 remain pending in the above-referenced application and are submitted for the Examiner's reconsideration.

The Examiner objects to the specification because it does not spell out the acronyms EEPROM, CD-ROM, or ASIC. But if these terms are well known in the art, as the Examiner acknowledges, there seems to be little point in amending the specification to spell out these acronyms. Accordingly, Applicants shall decline to amend the specification for this reason.

Claims 11-16 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Of claims 11 and 13, the Examiner declares "a computer program is considered non-statutory subject matter." Of claims 15 and 16, the Examiner declares a "computer readable medium, comprising a program code is considered non-statutory subject matter." In both these statements the Examiner states that the offending subject matter "is considered" non-statutory. The question is by whom? The Examiner cites to no judicial opinion or Board decision that interprets Section 101 as categorically excluding software or computer readable mediums from patent protection. Nor could he, since the vast weight of authority on this question is on the contrary position allowing such inventions to be protected by our patent laws. The Supreme Court of the United States has held that what is outside the broad scope of patent protection offered by Section 101 is "laws of nature, natural phenomena, and abstract ideas." *Diamond v. Diehr*, 450 U.S. 175, 185 (1981). No other class of non-statutory subject matter is legally recognized. Neither a computer program containing instructions nor a computer readable medium may be reasonably described as merely a law of nature, natural phenomena, or an abstract idea. Therefore, such subject matter is not to be considered non-statutory. Indeed, both sets of claims contain structure and are therefore properly regarded as "manufactures" under the statute. Computer "instructions" have been judicially recognized as consisting of structure. *Alacritech, Inc. v. Microsoft Corp.*, 2005WL850729 (N.D.Cal. Apr. 12, 2005) ("The Court concludes that 'a set of instructions executable on a processor' sufficiently discloses the structure as software..."). Moreover, the term "computer readable medium" identifies a tangible thing that performs a useful function. At the very least, its tactile quality and ability in effectuating a useful function should settle the question of whether it qualifies as a "manufacture" under the statute. Accordingly, withdrawal of this rejection is requested.

Claims 1, 2, 4, 6-8, and 10-16 stand rejected under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 5,995,623 to Kawano. Claims 3 and 9 stand rejected

under 35 U.S.C. § 103(a) as being unpatentable over Kawano. Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawano in view of United States Patent No. 6,215,875 to Nohda. Kawano encrypts only parts of the data stream, whereby the means for separating data which should be encrypted and data which should be not encrypted are very important. In the claimed invention the whole data stream, which means all transferred data, is encrypted as described on page 7, line 14 and 15 (and reflected in the amended claims), where it is said that the transmitted data is encrypted. Within the claimed invention only the whole data stream has to be encrypted and decrypted because of the fact described on page 8, 5th paragraph. There it is said that it is possible to safely encrypt large domains having the same content, whereby the encrypted domains do not provide any information regarding the key used and in addition it is said, that byte wise allocation between input and output data is impossible. So there is only the possibility to encrypt the whole data stream because of the fact that a bite wise allocation between input and output data is not possible, so when encrypting only parts as in the state of the art in our invention errors would arise because of impossible allocation.

In Kawano are only described extracted bits, whereby there is no description about the smallest amount of bits which are extracted. The claimed invention is orientated byte by byte which is very essential especially with regards to flash programming. This is described on page 8, 3rd paragraph, where it is said that the method described here does not distribute the input values to two or more registers so they can be altered simultaneously thereafter and could therefore be used for individual bytes whereby this is particularly advantageous with regard to flash programming. So according to the present invention the encryption maybe used byte by byte but only with regard to the whole data stream and the bytes are not allocated to each other, so that the encrypted byte is not the same as the decrypted byte on the same position. With regard to this the present invention reaches a very high performance with regards to time and the amount of code which could be encrypted. These aspects and these advantages are not taught by Kawano. With regard to this point the data security of the present invention is not that high as in Kawano, but on the other hand the performance of the present invention is higher than this state of the art. So this difference also shows how unequal the present invention and that of Kawano are with regard to the aspect of encrypting the whole data stream and no byte wise allocation between input and output data. Accordingly, Kawano does not teach the claimed invention, nor does Nohda overcome the deficiencies in Kawano.

It is therefore respectfully requested that the objections and rejections be withdrawn, and that the present application issue as early as possible.

Respectfully submitted,

KENYON & KENYON

By: Lisa Agris (Reg. No. 41,172)

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By _____

Gerard A. Messina
(Reg. No. 35,952)

One Broadway
New York, New York 10004
(212) 425-7200